



100 South Jefferson Road
Whippany, New Jersey 07981
201/884-8160

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Joanne Salvatore Bochis
Associate General Counsel

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AUG - 5 1993

August 5, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Regulatory Reform for Local Exchange
Carriers Subject to Rate of Return
Regulation

CC Docket No. 92-135

Dear Mr. Caton:

Enclosed herewith for filing with the Commission are the original and five copies of the National Exchange Carrier Association, Inc.'s Petition for Reconsideration in the above-captioned matter.

Please acknowledge receipt hereof by affixing a notation on the duplicate copy of this letter furnished herewith for such purposes and remitting same to bearer.

Very truly yours,


(BAS)
Joanne S. Bochis

JSB/bas
Enclosures

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AUG - 5 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Regulatory Reform for)
Local Exchange Carriers) CC Docket No. 92-135
Subject to Rate of Return)
Regulation)

PETITION FOR RECONSIDERATION

The National Exchange Carrier Association, Inc. (NECA), pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, hereby petitions for reconsideration of one aspect of the Commission's decision in the above-captioned proceeding.¹

I. Background

In the Regulatory Reform Order, the Commission adopted a system of incentive-based regulatory alternatives for small and mid-sized local exchange carriers (ECs) that are not subject to price cap regulation.² Specifically, the Commission established a range of regulatory options that appear to be more attuned to the diverse needs of these carriers than the price cap system. Options include a new incentive regulatory plan (Optional Incentive Regulation or OIR), expansion of the Section 61.39 (47 C.F.R. § 61.39) tariff filing procedures (relying on historical data) to include common line rates, and retention of the existing "baseline"

¹ Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, FCC No. 93-253, released June 11, 1993, appeared in 58 Fed. Reg. 36145 (July 6, 1993) (Regulatory Reform Order).

² See 47 C.F.R. §§ 61.41-61.49.

tariff filing procedures under Section 61.38 (47 C.F.R. § 61.38) that allow the NECA pools to continue to file annual tariffs based on prospective data.³

NECA is not seeking reconsideration of any of the fundamental features of the Commission's extended incentive proposals.⁴ NECA does request, however, that the Commission reconsider the decision not to allow ECs exiting the Optional Incentive Plan (OIR) to reenter NECA's Traffic Sensitive Pool.⁵

II. DISCUSSION

The Commission states that an EC may leave the OIR plan after a minimum of two tariff periods; but may not return to the NECA pools. That prohibition is codified as Section 61.50(d), 47 C.F.R. § 61.50(d). According to the Commission "[t]he proposed

³ Non-pooling ECs will, in addition, have the option to file either annual or biennial tariffs under Section 61.38. See Regulatory Reform Order at ¶ 102.

⁴ NECA limited its comments to the segment of the Commission's NPRM that addressed streamlined basic rate of return regulation. See NECA's Comments at 3, note 7, filed August 28, 1992 and NECA's Reply Comments, filed September 28, 1992, concerning Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Notice of Proposed Rulemaking, CC Docket No. 92-135, 7 FCC Rcd 5025 (1992) (NPRM).

⁵ NECA believes other matters it raised in its Comments and Reply need further consideration, and intends to address them in future proceedings. These include the opportunity under certain circumstances for ECs settling on cost to convert to average schedule settlements (See, NECA's Comments at p. 16 and Reply Comments at p. 14); NECA's possible introduction of some form of incentive regulation in pooling (See, NECA's Comments at p. 15 and Reply Comments at p. 13); and streamlined tariff filing requirements for new services and existing services with de minimis revenue levels (See, NECA's Comments at p. 9 and Reply Comments at p. 7).

restrictions are intended to assure that the plan creates long term incentives for efficiency, not opportunities for short term profits through switching between different regulatory plans. We proposed to deter the latter by limiting the carrier's choices if it wishes to leave the incentive plan."⁶

NECA believes that the Commission decision here is inconsistent with important Commission policies and is an unwarranted departure from precedent. The NECA Traffic Sensitive Pool is, and always has been, entirely voluntary for non-price cap companies. Except for limitations adopted for price cap companies,⁷ ECs have been generally able to enter, leave and reenter this pool since 1984, with the only requirement being timely notification to NECA.⁸

NECA was formed as a tariff filing agent, in part to reduce administrative burdens on the Commission and ECs with respect to federal access tariffs. The Commission and commenting parties have stressed the need for pool neutrality, i.e., that Commission rules do not advantage or disadvantage ECs that wish to participate in

⁶ See Regulatory Reform Order at ¶ 71.

⁷ The decision to elect price cap regulation has been established as "permanent." See, Section 61.41(d), 47 C.F.R. § 61.41(d). That rule, however, has been waived for small company mergers and acquisitions. See, The Island Tel. Co., Tel. & Data Sys., Inc., & Contel of Maine, Inc., Memorandum Opinion and Order, 7 FCC Rcd 6382 (1992).

⁸ Section 69.3(e)(6), 47 C.F.R. § 69.3(e)(6), requires pool changes to be reported to NECA on December 31 of each year.

the NECA pools in numerous proceedings.⁹

The Commission's explanation for limiting the options of former OIR participants does not take into account the policy of pool neutrality. ECs who decide to exit OIR may return to rate of return regulation either by filing individual company tariffs or by forming new groupings of companies to file common tariffs. The prohibition on NECA pool re-entry serves only to deny companies the administrative savings of participating in Association tariffs, rather than any real limitation on EC options. In view of OIR's two tariff period minimum and other plan safeguards, there is no public benefit obtained by differentiating between former OIR plan participants and other exchange carriers when it comes to optional membership in NECA's Traffic Sensitive Pool.

Neither the NECA pool or ECs electing OIR should be unfairly burdened by an unreasonable limitation on NECA pooling. In addition to violating pool neutrality principles, such a rule constitutes a penalty for ECs choosing the OIR plan.

⁹ See, Regulation of Small Telephone Companies, Notice of Proposed Rulemaking, CC Docket No. 86-467, 2 FCC Rcd 1206 (1986) at ¶ 4 and Order, 2 FCC Rcd 3811 (1987) at ¶ 7. See also, NTS Recovery, Order 2 FCC Rcd 2953 (1987) and MTS and Wats Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Order on Reconsideration, 3 FCC Rcd 4543 (1988).

III. CONCLUSION

The regulatory options the Commission adopted in this proceeding offer small and mid-sized ECs reduced regulatory burdens and optional regulatory alternatives. NECA urges the Commission to reconsider the requirement prohibiting OIR participants from re-entry into NECA's Traffic Sensitive Pool.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

Albert L. Thomas
Regulatory Manager

/s/Joanne Salvatore Bochis
Joanne Salvatore Bochis
100 South Jefferson Road
Whippany, New Jersey 07981

Its Attorney

August 5, 1993

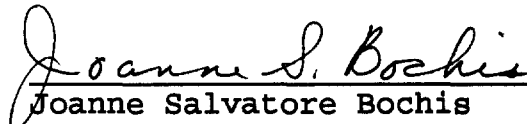
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